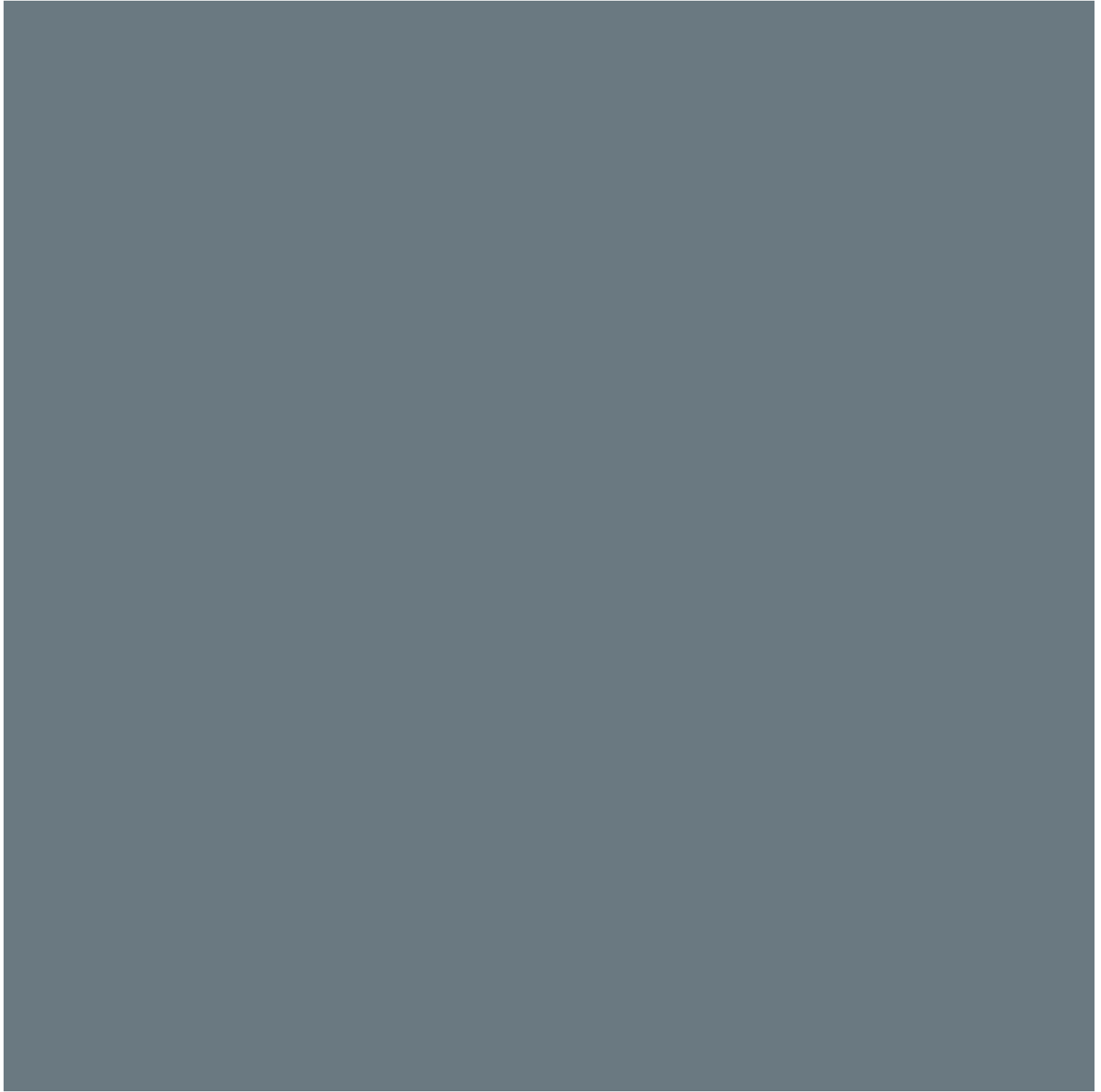




BATES WELLS & BRAITHWAITE LLP



A BRIEF OUTLINE OF THE LAWS RELATING TO
COMMUNITY AMATEUR SPORTS CLUBS (CASCS)
AND CHARITABLE SPORTS CLUBS.



Background

There are an estimated 110,000 sports clubs in the United Kingdom involved in over 100 sports. They perform a vital social role, helping to maintain and encourage an amazing diversity of sports. In an age of increasing unfitness, obesity and mental health issues their place in society becomes evermore important. But many clubs are under threat through a combination of the sale of sports grounds and lack of cash.

In the past one of the key factors for clubs was the lack of charitable status. This meant valuable tax concessions to both encourage donations and reduce tax burden on them, were not available.

However all this changed in 2002 when the Chancellor announced that CASCs could enjoy certain tax reliefs, similar to those available for charities (although not as extensive). At the same time the Charity Commission announced that in England and Wales clubs that promote “healthy sport” could be registered as charities. In Scotland, clubs can register with the Office of the Scottish Regulator ('OSCR'). Northern Ireland charities currently register with HMRC but will soon be required to register with the Charity Commission of Northern Ireland ('CCNI'). The Charities Act 2006 then introduced the new charitable purpose - 'promotion of amateur sport'. At the time of going to press the Charity Commission were consulting on the effect of this but it is set to widen the type of clubs that can register a charity.

So from there being no tax concessions available to clubs there is now a choice:

- CASC status, registered with the HMRC
- Charitable status; registered with the Charity Commission in England and Wales OSCR or CCNI.

CASC Status

Qualification

To qualify as CASC a club must:-

- As its main purpose provide facilities for, and promote participation in, one or more eligible sports.

It must

- Be open to all
- Be amateur
- Be established within the EU
- Have managers who meet HMRC's fit and proper person test

This means

“Eligible Sport” i.e. as listed by the HMRC - this covers 113 sports.

“Open to the whole community” i.e.

- Membership is open to all without discrimination
- Any fees are set at a level that do not pose a significant obstacle to membership or use of the club's facilities.

“Amateur” i.e.

- Players not paid but expenses can be reimbursed.
- Player/Coaches may be paid
- Non-Profit making
- Any net assets on dissolution are to be applied for approved sporting and charitable purposes.
- It provides the members and guests with only the ordinary benefits of an amateur sports club.

“Main purpose” i.e.

- The clubs constitution must make it clear that its object is
- To provide facilities for and
- Encourage participation in one or more eligible sports.

Registration

Submit to HMRC's Charities and CASCs Unit the CASC application form (available on www.hmrc.gov.uk/casc/cascapp-form.pdf) plus

- A copy of the CASC's constitution
- A copy of the CASC's latest accounts and bank statements
- A copy of the CASC's prospectus, members handbook, rule book, etc

Top Tips for Registration

- Read the HMRC's guidance carefully to ensure the club is eligible
- Check the club's constitution complies; if not consider submitting a revised version in draft to HMRC together with the other registration documents. The Sport and Recreation Alliance has appropriate model clauses and other information on their website - see www.cascinfo.co.uk

Tax Reliefs

For CASCs

- Exemption from Corporation Tax on profits from trading where the turnover of the trade is less than £30,000.
- Exemption from Corporation Tax on income from property where the gross income is less than £20,000.
- Exemption from Corporation Tax on interest received
- Exemption from Corporation Tax on chargeable gains.

For Donors

- Individuals can make gifts to CASCs using Gift Aid.
- Individuals can obtain relief from Inheritance Tax for gifts to CASCs.
- Businesses that give goods or equipment that they make, sell or use get relief for their gifts.
- Gifts of chargeable assets to CASCs by individuals or companies are Capital Gains Tax free.

Rate Relief

- CASCs get 80% mandatory and 20% discretionary rates relief on premises they occupy wholly or mainly for the purpose of the club.

Charitable Status

Qualification

To qualify as a charitable sports club the club must:-

- Either promote community participation in healthy recreation by providing facilities for playing sports or advance amateur sport;
- Have membership and facilities that are open to all without discrimination;
- Be amateur;
- Be for public benefit.

This means

"Healthy Recreation"

- If practised with reasonable frequency will tend to make the participant healthier i.e. less susceptible to disease.
- Healthy sports are not the same as the HMRC's list for CASCs and exclude angling; ballooning; crossbow; rifle and pistol shooting; flying; gliding; motor sports and parachuting.*

"Amateur Sport"

- "Sport" means sports or games which promote health by involving physical or mental skill or excursion.*

"Open membership" i.e.

- Facilities have to open to all.
- First come first served
- Membership must be affordable.
- There must be no test of skill for admission.*

"Competition and team structures" i.e.

A charitable sports club:-

- Can run competitive teams, leagues and ladders
- Can allocate facilities to allow competitive teams to train, play etc
- Must always bear in mind that the club is promoting community participation and therefore gives equal treatment to less skilful and; less competitive players.*

"Coaching" i.e.

- May be given if available for all levels of skill and can assist the better players provided this is not to the detriment of others.*

"Playing and non playing members" i.e.

- A charitable sports club cannot have a separate group of social members as such, although non-playing members that help run the club are allowed.*
- The Charity Commission recommends that bars be run through a separate company.

"Amateur" i.e.

- Players are not paid but expenses can be reimbursed; *
- Player/ coaches may be paid.

"Public Benefit"

- A charitable sports club should comply with Charity Commission guidance on public benefit - this is available on their website;
- This includes a requirement that those in poverty must not be excluded from the opportunity to benefit. Charitable clubs therefore need to consider options such as subsidising some membership subscriptions for those who cannot afford them or making facilities available to non-members.

Registration

In England and Wales to submit to the Charity Commission an online application (available on www.charity-commission.gov.uk) plus:-

- A copy of the club's constitution;
- Evidence that the club will have at least £5,000 income in the first year;
- Declaration signed by the trustees/management committee.

In Scotland submit to OSCR a copy of the club's constitution together with supporting documents. They are willing to consider draft constitutions.

For clubs in Northern Ireland a copy of the club's constitution and details of activities should be submitted to the HMRC office at Bootle, Merseyside.

Tax Relief

For Charities

Charities enjoy more extensive tax relief's than CASCs. These are:-

- Exemption from Corporation Tax on all profits not derived from fulfilling its charitable purpose
- Exemption from Corporation Tax on profits not derived from fulfilling its charitable purpose on the lower of 25% of its turnover or £50,000.
- Exemption from Corporation Tax on interest received
- Exemption from Corporation Tax on Capital Gains
- Exemption from Stamp Duty Land Tax on purchase of property

For Donors

- Companies and individuals can make gifts to charities under Gift Aid
- Individuals can obtain relief from Inheritance tax for gifts to charities.
- Businesses can give goods or equipment that they make, sell or use and get tax relief for their gifts.
- Gifts of chargeable assets to charities are free from Capital Gains Tax.

Rate relief

Charities obtain mandatory 80% rate on premises they occupy and are eligible to apply for discretionary relief for the remaining 20%.

A comparison of CASCs and Charitable Clubs

	Choosing Charitable Status	Choosing HMRC – CASC	Choosing no change
Which clubs can register?	Those which promote community participation in healthy recreation or promote amateur sport. Healthy sports. This currently excludes sports such as angling, flying and snooker. *	Sports recognised by The Sports Councils and listed in the HMRC guidance (which is on their website- www.hmrc.gov.uk).	N/A
Will the club need to change its constitution?	Probably, the club's objects must be wholly charitable i.e. to promote community participation in healthy sport or advance amateur sport.	Maybe; the club must be not for profit, this means that the constitution must for example have a winding up clause that prohibits assets being divided amongst members and instead provides for such assets to go to a charity, CASC or the sport's governing body.	No
Can the club have social members?	No, but non-playing volunteers and helpers are acceptable. This may include parents of junior members or people who still wish to be associated with the club but are unable to play for reasons of health or old age.	Yes, as long as the substantial majority of the clubs activity are focussed on providing facilities for, and participation in eligible sport(s). As a rule of thumb over 50% of member should participate (this includes both playing and organising activities).	Yes
Can players be paid?	No, But a player who also coaches or maintains the pitch, for example can be paid for this service. Players' expenses can be paid if it promotes participation.	No, But a player who also coaches or maintains the pitch, for example can be paid for this service. Players expenses can be paid.	Yes
Can the club have competitive teams?	Yes	Yes	Yes
Can the club run a bar?	No, this must be run through a trading subsidiary, unless the turnover is the lower of 25% of the clubs turnover or £50,000.	Yes, if it is a social adjunct to the main sporting purpose.	Yes
What about direct tax?	Primary purpose trading income is tax free. All rental income exempt. Capital gains and interest exempt from tax.	Gross income from fundraising and trading is exempt from tax if turnover is less than £30,000. Gross income from property exempt from tax where it is less than £20,000 (if over this all is taxable). Capital gains and interest exempt from tax.	No concessions No concessions Capital gains (subject to re-investment relief) and interest taxable.
What about gift aid?	Yes- for individual and corporate donations	Yes- donations from individuals only	No

	Choosing Charitable Status	Choosing HMRC – CASC	Choosing no change
Payroll Giving?	Yes	No	No
Inheritance tax relief on gifts?	Yes	Yes	No
Income tax relief on gifts of shares?	Yes	No	No
Stamp duty law tax exemption?	Yes	No	No
Does the club have to register?	Yes, within the Charity Commission in England and Wales. With the OSCR in Scotland and the CCNI in Northern Ireland.	Yes with HMRC	No
Rate Relief?	Yes, - 80% mandatory, 20% discretionary.	Yes - 80% mandatory, 20% discretionary.	Discretionary up to 100%
Stamp Duty Land Tax	Full relief	No relief	No relief
Value added tax	Normal VAT rules apply but reliefs may be available <ul style="list-style-type: none"> • Zero rating the construction costs of new buildings • Exemption for income from one off fund raising events 	Normal VAT rules apply.	Normal VAT rules apply.
Donations from charities?	Easy if they have compatible objects.	Possible. Informed donor charities will understand and make donations; others may be reluctant.	As for CASCs
Extent of specific regulation relating to the club's status.	Annual returns need to be submitted and the Charity Commission has wide powers to investigate the Club's activities.	Very light touch from HMRC	None
Can profits be distributed to members?	No	No	Yes

* Following the Charity Commission's recent consultation on amateur sport (which closed on 31 May 2011) we are expecting new guidance to be issued from the Charity Commission. Issues marked with an asterisk may be subject to change. The current guidance is RR11.

This booklet contains a brief summary of the law at 20 June 2011. This is for information only and does not constitute legal advice. Specific Advice must be sought for particular circumstances.

Bates Wells & Braithwaite LLP

Solicitors

BWB is recognised as one of the leading charity law firms in country. It was established by Lord Philips of Sudbury OBE in 1970. He has been active for many years in campaigning for Community Amateur Sports Clubs to be given recognition as charities. Having failed to obtain the registration of the North Tawton Rugby Club as a charity he led efforts to have Community Amateur Sports Clubs (CASC) awarded a unique tax status akin to that of a charity but without being registered as a charity. That campaign reached its fulfilment in the 2002 Finance Act. Lord Philips continued campaigning for rates relief for CASCs, this was accepted by the Government in 2003.

Our Services

With our long history of advising a wide variety of charities from international household names to small start up as we are uniquely placed to work with organisations that wish to take advantage of either charitable or CASC status. We can provide a comprehensive service including advice on:-

- Registration as a charity
- Registration as a CASC
- Helping establish model forms of constitution for charitable sports clubs or CASCs
- Establishing charitable foundations to fund charitable sports clubs or CASCs.
- Fundraising
- Establishing charities affiliated to sports national governing bodies (who as part of their role can assist clubs in becoming charities or CASCs).
- Tax planning, financing and VAT
- Rate relief
- Trustees' powers, responsibilities and liabilities.
- Employment
- Charitable trading activities
- Intellectual property
- Land transactions
- Litigation

Bates Wells & Braithwaite LLP

Solicitors

Our Reputation

We have a proven track record of handling a wide range of work in a cost effective manner. We aim to give clear and practical advice that meets clients needs.

The Team

Our community amateur sports team is made up of:-

Thea Longley

Mary Groom

Augustus Della-Porta

Bill Lewis

In addition they are supported by the other 25 members of our charity and social enterprise team, and colleagues in the property, dispute resolution and employment teams.

Thea Longley

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With BWB since 1999. A Partner in the Charity and Social Enterprise department and joint heads of the Sports Group. Specialises in charity law and acting for social enterprises. She represents sports charities, NGBs, clubs and donors. Chaired the Charity Law Association Working Party on Amateur Sport.

Mary Groom

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Qualified at BWB in 1998. A Partner in the Charity and Social Enterprise department. Specialises in charity law and advising social enterprises, in particular organisations carrying out education and regeneration activities. Has played competitive tennis at clubs in Middlesex and Hertfordshire.

Augustus Della-Porta

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Qualified at BWB in 2009. A solicitor in the Charity and Social Enterprise Department. Specialises in charity law and advising charities and not for profit organisations with a particular focus on sports clubs and national governing bodies. Recently assisted in preparing the CLA's response to the Charity Commission's Consultation on Amateur Sport.

Bill Lewis

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A consultant in the Charity & Social Enterprise Department. Advises on all aspects of taxation affecting charities and sports clubs (VAT, PAYE, Corporation Tax). Is involved in running a CASC, Hemingfords Regatta.

Enquiries

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